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| 10/608,106      | 06/30/2003  | Christopher P. Foley | 86769-0010          | 1052             |

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| EXAMINER |
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OMOTOSHO, EMMANUEL

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3714

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01/25/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dcptopatent@hhlaw.com

## Office Action Summary

Application No.

10/608,106

Applicant(s)

FOLEY ET AL.

Examiner

Emmanuel Omotosho

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/02/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos (US 6,099,320) in view of Gupta et al. ("Gupta") US 2005/0192954 A1 and in further view of Griffor et al. ("Griffor") US 2002/0173999 A1, Cozens et al. ("Cozens") US 2002/0064766 A1 and Seetharaman et al. ("Seetharaman") US 2007/0061183 A1.

1. [Claims 1,3,15,18-21]: Regarding Claim 1, Papadopoulos teaches a content development platform, said content development platform containing electronic tools for receiving input relating to the compiling of instructional materials (i.e., audio, video, and textual content) (Col 2 lines 21-35) and generating electronic learning content (i.e., computer-based training modules). Papadopoulos teaches an electronic delivery platform (i.e., Virtual Training Center), said electronic delivery platform containing electronic tools for delivering instruction to the students, said delivered instruction incorporating said electronic learning content. See Col.2 lines 38-47, Col.8: 1-13.
2. Papadopoulos teaches a learning administration platform, said learning administration platform containing electronic tools (e.g., VIP directory) for storing said electronic learning content, storing registrar information regarding said students and said instruction (e.g., courses that the student has completed), and storing catalog

information (e.g., curriculum) regarding said learning content. See Col.5 lines 35-50, Col.8: 1-6. Papadopoulos teaches a resources synchronization platform (i.e., Virtual Training Center), said resources synchronization platform including a resources synchronization tool adapted to obtain and store data regarding compilation and generation functions as performed by said content development platform, data regarding delivery functions as performed by said delivery platform, said registrar information and said catalog information from said learning administration platform; wherein said resources synchronization tool provides an interface for accessing and processing said stored compilation data, generation data, delivery data, registrar information and catalog information upon request. See Col.5 lines 35-50, Col.8: 1-6.

3. Papadopoulos does not expressly teach said synchronization tool processing said accessible data and information into resource utilization reports on demand such that said reports may be utilized to make resource allocation decisions across said learning services providing entity.

However, generating resource utilization reports from accessible data and information on demand is old and well known in the art.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into Papadopoulos' invention in order to make efficient use of resources.

4. In regards to claim 8, Papadopoulos teaches organizing allocation and scheduling information into sortable scheduling and usage reports (Col. 7 lines 34-40).

5. In regards to claim 9, Papadopoulos teaches reports may support learning solution processes selected from the group consisting of forecasting budgeting, performance planning, performance reporting, account management, production management, media configuration, delivery coordination, and needs analysis (Col 7 lines 60-67).

6. In regards to claims 10,17,26, Papadopoulos teaches the learning solution is able to be outsourced from a learner organization (School/business entity) to said learning services providing entity (Administrators) according to a learning services agreement (the curriculum), said agreement detailing minimum service levels that must be met by said providing entity (inherent in the curriculum) (Col.7 lines 28-67)

Papadopoulos does not expressly teach electronic delivery platform is adapted to record performance metrics during delivery of said instruction, during compilation of instructional materials and during generation of electronic learning content and wherein said performance metrics measure aspects of said compilation, said generation, and said delivery.

However in a similar network system learning solution invention, Gupta teaches a delivery system capable of recording performance metrics (Par. 0018), the use of a database to store such information (Fig 3, Fig 4 Par. 0129), presenting the information to the teacher/supervisor (Par. 0129) wherein Gupta teaches a form of presentation to be of a report format (Par. 0013) (Claims 1-4,15-16,18-21,25). The following interpretations are being made:

- Compilation of instructional materials – the compilation of the materials that is inherently done before generating the specific materials that would be delivered to the user
- Generation of the learning content – the generation of the specific materials that would be delivered to the user
- Delivering instruction materials – delivering the instructional materials to the user

7. In regards to claim 6, said performance metrics data is accessible (through the database Par. 0129) by resources synchronization tool in substantially real time.

8. In regards to claims 7, 23-34, Gupta teaches an electronic interface for allocating the utilization of constrained learning resources subject to relevant instructor and student availabilities (Par. 0090, 0091, 00130, 0134)

9. Papadopoulos as modified by Gupta did not specifically teach the performance metrics defined according to the identified business goals and strategies of the organization as disclose in claims 11 and 27. However, defining the performance goals according to the organization's goals and strategies is inherent and well known in the art. After all, it is with the organization's goals and strategies in mind that the metrics are developed in the first place. Nonetheless, if the applicant wishes to contend that this is well known in the art, the applicant should respectfully note the Griffor reference that shows this feature to be old in the art (Griffor Par. 0015).

10. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include performance metrics defined according to the organizations business goals and strategies. The motivation comes

from Griffor Par. 0015 where it states that *By focusing all resource allocation and development on achieving the organizational goals of the organization, it provides aligned metrics for measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants.*

**11. Papadopoulos does not expressly teach content development platform is adapted to record performance metrics. However, as shown above, Gupta teaches a system that record performance metrics.**

**12. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to have the content development platform record performance metrics defined according to the organizations business goals and strategies. The motivation comes from Griffor Par. 0015 where it states that *By focusing all resource allocation and development on achieving the organizational goals of the organization, it provides aligned metrics for measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants.***

**13. In regards to claims 5,12,22 and 28, Papadopoulos as modified by Gupta did not specifically show a development ratio in light of costs and man-hours/elapsed time. However, Seetharaman shows this feature to be old in the art (Seetharaman Par. 0037).**

**14. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include Seetharaman developmental**

ratio (which is in light of expended costs and man-hours/elapsed time) for budget planning and revision.

15. The motivation comes from Seetharaman Par 0037 where it states *the budget computation allows changes to the budget model mid-year in a single plan.*

16. In regards to claim 13-14,29-30, although they disclose recording the learning cost, Papadopoulos as modified by Gupta did not specifically teach learning costs allocated and billed to appropriate business units. However, Cozens shows this feature to be old in the art (Abstract, Par. 0197).

17. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include learning costs allocated and billed to appropriate business units. The motivation comes from Cozens Abstract where it states that the invention *presents a global solution for large companies to manage a global employee-training program by providing a centralized database, automated fault-tolerant notification, and flexible HTML-based user interfaces.*

18. In regards to claims 14 and 30 applicant should respectfully note that establishing a cost schedule in which tasks performed are broken down by charges is inherent in providing a learning system cost. For this is how cost are calculated, as in the total charges for each work done is tallied up and total cost is calculated.

#### ***Response to Arguments***

19. Applicant's arguments filed 11/02/07 have been considered but they are not persuasive.

20. On page 15, applicant argues, "Applicant submits that Papadopoulos likewise fails to disclose teach, or suggest any type of platform adapted to perform content development functions, and thus likewise fails to disclose a platform adapted to record performance metrics during compilation of instructional materials. In contrast, claim 1 and claim 15 as amended herein require the integration of both an electronic delivery platform and a content development platform by the resources synchronization tool. These limitations, in conjunction with various other language present in those claims, clarify how the Office Action's analysis quoted above is inaccurate."

21. The examiner respectfully disagrees. Fig 15 of Papadopoulos teaches such integration.

22. On pages 15-16, applicant argues, *"Applicant disagrees with the Office Action's italicized characterization above that since Gupta allegedly teaches a delivery system that records perform metrics during delivery of content, it inherently also teaches a "content development platform containing electronic tools for receiving input relating to the compiling of instructional materials and generating electronic learning content" as recited in Applicant's claims. The differences between a content development platform (as described in Applicant's specification with respect to element 410 of FIG. 4), which has tools that enable an instructor to compile and generate instruction materials, and an electronic delivery platform (element 430 of FIG. 4), which transmits the already compiled and generated materials and content to end users, are made apparent by Applicant's specification, are recited explicitly in Applicant's present claims, and will be readily appreciated by one skilled in the art. Even if the delivery of pre-existing materials is disclosed by Gupta, the Examiner cannot summarily conclude that Gupta inherently (i.e., necessarily and invariably per the standard required by In re Rijckaert, 9 F.3d 1531, 1534 (Fed. Cir. 1993) and MPEP sec. 2112.) discloses the compilation and generation of materials and content, let alone the collection of any metrics data during the compilation and generation. Close examination of Gupta shows*

*that Gupta is concerned on/v with the electronic delivery of pre-existing content and materials to students. Any performance metrics recorded by Gupta are thus collected solely by an electronic content delivery system and relate solely to measuring data incidental to delivery of pre-existing content to students (e.g., what content to which students, electronic test scores, etc.). The specific portion of Gupta cited by the Office Action is particularly instructive of this point."*

23. The examiner respectfully disagrees. The examiner should point out once again that Gupta is relied upon for its teachings of a delivery system capable of recording performance metrics with use of a database to store such information, presenting the information to the teacher/supervisor wherein Gupta teaches a form of presentation to be of a report format. The examiner made the interpretation that for Gupta delivery system to be able present a specific material to a user, the said material first has to be requested for by the user, after such request, the system will then gather and generate(i.e. compile) the requested information and present it to the user. A delivery system, specifically a system involving the use of a database, cannot present/deliver data to a user without compiling the data first. Furthermore, the said delivery system would be unable to present any requested data to a user without generating the requested data first. If a delivery system does not generate and compile requested data, there would be no data to deliver.

24. On page 17, applicant argues, *"Further, none of Papadopoulos, Gupta, or remaining prior art references of record (namely Griffor, Cozens, and Seetharaman) describe a synchronization tool for collecting performance metrics that measure aspects of compilation, generation, and delivery, and then using such metrics for the preparation of cost allocation reports that reflect all aspects of an end- to-end learning solution (development and delivery) as recited in Applicant's claims. Mere allegations by the Office Action that cost allocations are known (e.g., with reference to Cozens) or that development ratios*

*can be tracked (e.g., with reference to Seetharaman) does not provide a basis for concluding that one of ordinary skill in the art would find obvious Applicant's recited novel systems for integrating disparate aspects of a learning solution. The fact that none of the five references of record attempt such a solution weighs against such a conclusion. The synchronization tool captures, integrates and reports performance indicators across a learning organization's key functional units (e.g., content development, delivery of content and instruction, and learning solution administration) to administrators that can make decisions from a business strategy alignment perspective. Thus, the performance indicators can include, for example, measurements of the output of a learning solution (e.g., instructional course-hours developed or delivered, hours or resources expended in development, and combinations thereof), measurements of performance level of learning efforts provided by the learning solution (e.g., student satisfaction, test and/or certification results), and measurements of the business impact of learning efforts (e.g., improvements in employee productivity following training). See Spec. at par. [0017] through [0021]. The performance indicator data is assembled and compiled automatically by the synchronization tool into reports that may be made available to administrators of a learning solution to create useful cost; resource usage, and learning effort success/failure reports. Where an organization's learning solution includes the use of an independent business entity according to a service level agreement, for example, the reports can focus on key metrics defined in the agreement and be utilized to track and allocate costs. See Spec. at par. [0024] and [0026]. The prior art fully lacks this capability, and thus does not render Applicant's claimed invention obvious"*

25. However, applicant should respectfully note that the features pointed to in par 0017,0021, 0024 and 0026 are not recited in the rejected claim(s). The current claim language were given there broadest and reasonable interpretation. If applicant believes that the limitations recited in the said paragraphs holds patentable weight, applicant is advised to put such limitation in the claim language. The current claims are interpreted in light of the specification, however, the limitations from the specification are not read

into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Omotosho whose telephone number is (571) 272-3106. The examiner can normally be reached on m-f 10-6.

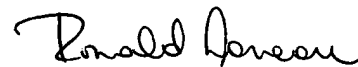
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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EO

  
RONALD LANEAU  
PRIMARY EXAMINER

1/17/08